

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE #19-1979:

MONTANA PUBLIC EMPLOYEES  
ASSOCIATION, INC., on behalf  
of MARTIN STAFFORD and ELAINE  
BROWN,

Complainants,

VS.

FINAL ORDER

COUNTY COMMISSIONERS, CASCADE  
COUNTY, MONTANA, and C.L.  
O'CONNELL, CASCADE COUNTY  
TREASURER,

Defendants.

\*\*\*\*\*

No exceptions having been filed, pursuant to ARM 24.26.107,  
to the Findings of Fact, Conclusions of Law and Recommended Order  
issued on April 7, 1980;

THEREFORE, this Board adopts that Recommended Order in this  
matter as its FINAL ORDER.

DATED this 22<sup>nd</sup> day of August, 1980.


BOARD OF PERSONNEL APPEALS

BY:

  
Brent Cronley  
Chairman

\*\*\*\*\*

CERTIFICATE OF MAILING

I, , do hereby certify and state  
that I did on the 25<sup>th</sup> day of August, 1980 mail a true and correct  
copy of the above FINAL ORDER to the following:

MPEA, Inc.  
P.O. Box 5600  
Helena, MT 59601

C.L. O'Connell, Treasurer  
Cascade County Courthouse  
Great Falls, MT 59401

Cascade County Commissioners  
Cascade County Courthouse  
Great Falls, MT 59401

Dennis McCafferty  
430 Northwestern Bank Building  
Great Falls, MT 59401

Gary M. Zadick  
Alexandor and Baucus  
Strain Building  
Great Falls, MT 59401

Barry L. Hjort  
111 North Last Chance Gulch  
Helena, MT 59601



STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE #19-1979;

MONTANA PUBLIC EMPLOYEES  
ASSOCIATION, INC., on behalf  
of MARTIN STAFFORD and ELAINE  
BROWN,

Complainants,

vs.

COUNTY COMMISSIONERS, CASCADE  
COUNTY, MONTANA, and C.L.  
O'CONNELL, CASCADE COUNTY  
TREASURER,

Defendants.

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FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

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I. INTRODUCTION

The Montana Public Employees Association (herein MPEA) has charged the Cascade County Commissioners and the Cascade County Treasurer with violating Montana's Collective Bargaining for Public Employees Act by refusing to submit a labor contract dispute to arbitration as set forth in the labor agreement. The labor contract dispute concerns the dismissal or not rehiring of Martin Stafford and Elaine Brown (herein Stafford, Brown), Deputy County Treasurers.

This RECOMMENDED ORDER is divided into the major areas of I, Introduction, II Findings of Fact, III The Constitution and Statutory Outline, IV Discussion, V Conclusions of Law and VI Recommended Order. The largest part of this Order deals with the County Treasurer's, C. L. O'Connell, issue; "Who is the Public Employer of Stafford and Brown?"

II. FINDINGS OF FACTS

A. The parties entered into the following stipulation:

For purposes of resolving the issues raised by the Answer of Defendant C. L. O'CONNELL, the parties stipulate as follows:

1. At all times material hereto the Montana Public Employees Association (herein MPEA) was certified as the exclusive bargaining representative for affected employees of Cascade County.

2. MPEA, the Cascade County Commissioners, George Schroeder as Cascade County Treasurer, and others signed an agreement (a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference) entitled "Agreement Between Montana Public Employees Association and Cascade County" which was by its terms effective from the period of July 1, 1977 through June 30, 1979.

3. George L. Schroeder, was the duly elected Cascade County Treasurer at the time he signed the agreement.

4. Defendant C. L. O'CONNELL was duly elected Cascade County Treasurer on November 11, 1978 and took his oath of office and assumed the office on March 5, 1979.

5. Defendant C. L. O'CONNELL is not a signature party to the agreement.

6. On February 5, 1979, Defendant C. L. O'CONNELL advised MARTIN STAFFORD and ELAINE BROWN, who at that time worked in the Cascade County Treasurer's Office, by letter that they would not be rehired after March 2, 1979 which was the end of the term of office of George L. Schroeder, the then Cascade County Treasurer.

7. MARTIN STAFFORD and ELAINE BROWN have not worked in the Cascade County Treasurer's Office since 5:00 o'clock P.M., March 2, 1979.

8. MARTIN STAFFORD and ELAINE BROWN, through the MPEA are asking for reinstatement, among other things, to their positions in the Treasurer's Office under the terms of the agreement.

9. That this Stipulation shall serve as the record for purposes of resolving the issues raised by the Answer of Defendant C. L. O'CONNELL, and that the parties shall have thirty (30) days from the date of this Stipulation to file briefs.

The parties later entered into the following stipulation:

The parties supplement the Stipulation previously filed herein on August 30, 1979, as follows:

In addition to the stipulated facts set forth in the prior Stipulation, the parties stipulate that MARTIN STAFFORD AND ELAINE BROWN were duly appointed Deputy County Treasurers during their employment in the Cascade County Treasurer's Office.

B. MPEA, the Cascade County Commissioners, George R. Schroeder, Cascade County Treasurer, and others signed a collective bargaining agreement (Exhibit "A") effective from July 1, 1977 through

June 30, 1979. The collective bargaining agreement contains the following significant articles:

PREAMBLE

[Page 1]

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1977, at Great Falls, Cascade County, Montana, by and between THE MONTANA PUBLIC EMPLOYEES ASSOCIATION, hereinafter referred to as the "ASSOCIATION" and CASCADE COUNTY, hereinafter referred to as the "EMPLOYER" WITNESSETH:

ARTICLE 1

RECOGNITION

[Page 1]

The EMPLOYER recognizes the ASSOCIATION as the exclusive bargaining agent for the following employees:

1. All Deputies, and clerks and Assistants and other employees except those who are elected in the following offices of the Cascade County Courthouse: Clerk and Recorder, Treasurer, Auditor, County Commissioners, Surveyors, Superintendent of Schools, Clerk of the Court, Justice of the Peace, County Attorney except the legal staff, non-uniformed personnel in the Sheriff's Office, IBM, Switchboard, Probation Office, Public Defender except legal staff, one floating position. (Secs. 16-3701 to 16-3706, 75-5804 and 16-3301, R.C.M. 1947.)

2. Other secretarial, bookkeeping, stenographic and clerical employees of Cascade County, authorized by the Laws of Montana. (Sec. 16-2409 and 16-913.)

3. Other employees of Cascade County who choose to be represented by the ASSOCIATION.

ARTICLE 17

JOB SECURITY

[Pages 7 and 8]

Section 1: Probationary Period.

A. The probationary period shall be utilized for the most effective adjustment of a new employee and for the elimination of any employee whose performance does not in the judgment of the appointing authority meet the required standards of performance.

B. The probationary period shall be six (6) months.

C. If the appointing authority determines at any time during the probationary period that the services of the probationary employee are unsatisfactory, the employee may be separated upon written notice by the Employer.

Section 2: Permanent Status.

A. Any employee who has not been notified fifteen (15) days prior to the end of his probationary period shall automatically attain permanent status.

Section 3: Dismissal:

A. The Employer may remove any employee with permanent status only for cause, but not before furnishing the employee and the Association personally or by registered mail with a written statement of the statutory or other grounds and the specific reasons for dismissal in sufficient detail to apprise the employee of the facts. The Employer shall include in the written statement to the employee notice of the employee's right to appeal in writing to the Executive Body within thirty (30) days from the date of notice of dismissal.

This provision shall not, however, be construed as precluding the Employer from relieving an employee immediately from his official position or from excluding him from his post or place of duty or employment pending preparation and giving notice of dismissal, but no pay shall be withheld for such period.

B. An employee with permanent status may, in addition, appeal his dismissal through the grievance procedure.

C. Any suspension which results in time off without pay may be appealed through the grievance procedure. If appealed, the suspension cannot begin until after the final decision is given.

D. The change of Elected Official for political reasons shall have no effect on the employees' status for longevity or pay.

E. Employees shall retire at the end of the fiscal year in which they reach age sixty-five (65). Continuation of employment beyond age sixty-five (65) will be permitted at the Employer's option when requested in writing at least six (6) months prior to the end of the fiscal year in which the employee reached age sixty-five (65). Employment will be continued one (1) year at a time.

ADDENDUM A  
GRIEVANCE PROCEDURE  
[Pages 10 and 11]

Section 1: For the purposes of this grievance procedure, a grievance exists whenever "an employees (SIC) feels his employment has been adversely affected either by an action or inaction of someone against him or her."

Section 2: For the purpose of this grievance procedure, the Employer shall define in writing the following terms:

- (1) Immediate Supervisor (if position exists)
- (2) Elected Official
- (3) County Commissioners

Section 3: All hearings on grievance appeals shall be closed to the public. The employee shall have the right to representation as follows:

- (1) The term "employee" shall also mean the employee's representative.

2 (2) MPEA shall, if requested by the employee, act as the  
3 representative of the employee and so notify the employee  
4 and the Employer.

5 (3) The employee may, at his own expense, or MPEA, at its  
6 own expense, select any attorney to represent the employee.

7 Section 4: The parties hereby agree that informal discussion  
8 is encouraged, however, if, through informal discussion an  
9 employee's grievance is not resolved, he may seek relief by  
10 following the steps below, in sequence shown:

11 (1) An employee who feels aggrieved and wishes to file a  
12 formal grievance shall state his grievance in writing within  
13 fifteen (15) days of the origin of the problem and shall give  
14 his statement to the Immediate Supervisor.

15 This statement shall contain the following:

16 a) The employee's name, b) his position, classification,  
17 or title, c) his department and section, d) his mailing  
18 address, e) a brief statement of the nature of his grievance,  
19 f) proposed solution to the grievance, g) signature of the  
20 employee, and, h) date statement was signed by employee.

21 (2) If, within five (5) working days and after receiving  
22 the written decision of the Immediate Supervisor, the employee  
23 is still dissatisfied, he may forward his request to the Elected  
24 Office Head.

25 (3) If, within five (5) working days and after receiving  
26 the written decision of the Elected Office Head, the employee  
27 has not received satisfactory relief, he may file his request  
28 with the County Commissioners, who shall hold a hearing within  
29 ten (10) working days after receiving the employee's request.  
30 The County Commissioners shall render a decision within five  
31 (5) working days following the hearing. Within the established  
32 time limitation, the County Commissioners may appoint or utilize  
an individual or a committee to assist and recommend a course  
of action.

(4) If the employee is still dissatisfied, he may request  
binding arbitration through the Board of Personnel Appeals,  
Department of Labor and Industry.

(a) The request shall be for the names of five (5)  
individuals qualified as arbitrators.

(b) With the employee choosing first, each side will  
cross off one name alternately until a single name remains.  
This will be the name of the binding arbitrator.

(c) The arbitrator shall have access to all of the materials  
and information used in previous hearings and any other  
information he may request.

(d) The arbitrator shall hold a hearing within fifteen  
(15) working days of his receipt of the request for binding  
arbitration. The decision of the arbitrator shall be made  
within thirty (30) days and will be final and binding.

(e) Each side in the dispute will pay one-half (1/2) of the  
cost of the binding arbitration.

This Article does not apply to people employed under specially funded programs as long as they remain on these programs.

TERM OF AGREEMENT

THIS AGREEMENT is effective July 1, 1977, and shall continue in full force and effect until the 30th day of June, 1979, at which time thereafter, unless written notice is given by either party to the other party before the 1st day of May of any year, indicating that changes in the Agreement are desired or [or] for termination of the Agreement. Such notice shall set forth the changes requested to be made in the Agreement or termination of the Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the day and year first above written:

CASCADE COUNTY, MONTANA AND  
THE BOARD OF COUNTY COMMISSIONERS OF CASCADE COUNTY,  
MONTANA

THE MONTANA PUBLIC  
EMPLOYEES ASSOCIATION,  
INC.

s/BY: John St. Jermain  
Chairman of the Board of County  
Commissioners, Cascade County

s/BY: Thomas E. Schneider  
Thomas E. Schneider  
Executive Director

s/BY: J. L. Lennon  
Clerk and Recorder

s/BY: James S. Wilson  
Cascade Co. Chapter  
President

s/BY: George R. Schroeder  
Treasurer

s/BY: Lucille Evans  
Member, Negotiating  
Team

s/BY: \_\_\_\_\_  
Auditor

s/BY: Mary Ann Butler  
Member, Negotiating  
Team

s/BY: Robert L. Batista  
Surveyor

s/BY: Robert E. Bateman  
Member, Negotiating  
Team

s/BY: Gladys E. Harvey  
Superintendent of Schools

s/BY: Florence McGiboney  
Clerk of Court

s/BY: Patrick L. Paul  
Justice of the Peace

s/BY: J. Fred Bourdea  
County Attorney

s/BY: L.W. Fasbender  
County Commissioner

s/BY: Franklin H. Steyart  
County Commissioner

2 C. On November 1, 1979, the Hearing Examiner took Administrative  
3 Note of Unit Determination No. 10-75, Cascade County MPEA election.  
4 A portion of the Unit Determination No. 10-75 file contains the  
5 following:

6 May 1, 1975

7 Mr. Patrick F. Hooks, Chairman  
8 Board of Personnel Appeals  
9 1434 Roberts  
Helena, Montana 59601

10 Dear Mr. Hooks:

11 Pursuant to rule Sub Chapter 10-24-3.8(10-38020 (3), the Montana  
12 Public Employees Association does hereby file this petition for  
a New Unit Determination:

13 (i) All employees except those who are elected in the following  
14 offices of the Cascade County Courthouse. Clerk and Recorders,  
15 Treasurer's, Auditors, Surveyors, Supt. of Schools, Clerk of  
16 Court, Justice of the Peace, County Attorney except the legal  
staff, Non-uniform personnel in the Sheriff's office, IBM,  
Switchboard, Probation office, Public Defender except legal  
staff, one floating position.

17 (ii) Non meeting has been held with the employer but to our  
18 knowledge all of these employees are courthouse employees  
and the unit is all inclusive of those who are eligible.

19 (iii) Non other labor organization to our knowledge.

20 (iv) There are no current or past contracts covering these  
employees.

21 (v) There are 70 employees in this unit.

22 This petition is accompanied by authorization cards which total  
23 in excess of the required thirty percent (30%).

24 Thank you...

25 Sincerely yours,

26 s/Thomas E. Schneider  
Executive Director

27  
28 BEFORE THE BOARD OF PERSONNEL APPEALS  
29 STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION  
Unit Determination No. 10(1975)

30 \* \* \*

31 8. The election shall be held on July 14, 1975 from 4:00  
P.M. to 6:00 P.M., in Room 112, Cascade County Courthouse,  
32 Great Falls, Montana.

9. The appropriate Collective Bargaining Unit is a unit  
consisting of all non-exempt clerical and general office employees  
of Cascade County in the following offices: Clerk and Recorder,



Treasurer, Auditor, Surveyor, County Attorney, Justice of the Peace, IBM, Switchboard, Probation Office, Superintendent of Schools, Clerk of Court, Public Defenders, Commissioners, and Sheriff.

s/John St. Jernain  
(EMPLOYER)

s/Thomas E. Schneider  
(LABOR ORGANIZATION)

(ADDRESS)

Box 1184  
(ADDRESS)

Cascade Co.  
(NAME & TITLE)

MT. Public Employees Assoc.  
(NAME & TITLE)

6-30-75  
DATE

7/7/75  
DATE

DATE APPROVED 7-11-75

s/Robert R. Jensen  
Executive Secretary  
Board of Personnel Appeals

July 21, 1975

Cascade County Commissioners  
Cascade County Courthouse  
Great Falls, Montana 59405

Dear Commissioners:

The purpose of this letter is to certify the results of the election conducted by the Board of Personnel Appeals on July 14, 1975 to determine the representative desired by employees of Cascade County.

There were seventy-two (72) employees eligible to vote of which forty-six (46) valid ballots were cast. Forty-two (42) ballots were cast in favor of representation by the Montana Public Employees Association; and four (4) ballots were challenged by the county under the provisions of MAC 24-3.8(18)-38230(9) Challenges. (Three additional positions were to be challenged, but those employees did not cast ballots.)

Basis of challenges and Board rulings are as follows:

A. Elaine Brown (County Treasurer's office), Martin Stafford (County Treasurer's office), and Shirley Strand (County Auditor's office). These employees were challenged by Cascade County as "supervisory employees" and "management officials" as defined and exempted by section 59-1602 R.C.M., 1947.

These employees are eligible for collective bargaining representation. They do not possess sufficient supervisory authority or management responsibility to warrant their exclusion from the bargaining unit.

None of the above named employees has the authority to hire or fire subordinates, their chief responsibility being the direction and instruction of fellow employees.

2 B. Joseph J. Schmidt (Chief Deputy Clerk and Recorder),  
3 Margaret E. Lindstrand (Chief Deputy County Superintendent  
4 of Schools), and Joseph E. Zupan (Chief Deputy Clerk of  
5 Court). These employees were also challenged by the  
6 county with reference to section 59-1602 R.C.M. 1947.

7 The Board has determined, based on its investigation, that  
8 these employees do have sufficient supervisory authority  
9 and management responsibility and are therefore exempt  
10 from the bargaining unit.

11 C. Jean Ann Carlsen (secretary to the County Commis-  
12 sioners). Cascade County challenged this position based  
13 on the confidential nature of her work with respect to  
14 labor-management relations. The Montana Public Employees  
15 Collective Bargaining Act does not provide for a "confiden-  
16 tial" exemption. Therefore, as the Board of Personnel  
17 Appeals has no authority to exclude this employee from  
18 collective bargaining representation, she is included in  
19 the bargaining unit.

20 Because there is no mathematical possibility of their  
21 effecting the results of the election, the challenged ballots  
22 determined eligible will not be opened.

23 There being a clear majority, the Board of Personnel  
24 Appeals hereby certifies the Montana Public Employees  
25 Association as the exclusive representative for collective  
26 bargaining purposes for the general office and clerical  
27 employees of Cascade County in the following offices: Clerk  
28 and Recorder, Treasurer, Auditor, Surveyor, County Attorney,  
29 Justice of the Peace, IBM, Switchboard, Probation Office,  
30 Superintendent of Schools, Clerk of Court, Public Defenders,  
31 Commissioners, and Sheriff.

32 Thank you for your cooperation and assistance in this  
matter.

Sincerely,

Robert R. Jensen  
Executive Secretary

NOTE: This unit Determination file contains no objections to a  
single multi office bargaining unit.

The attorney for Mr. O'Connell argues that the materials in the  
Administrative Note... "is not relevant to and has no affect on the  
issue of 'who is the public employer' as briefed by this defendant."

### III. THE CONSTITUTION AND STATUTORY OUTLINE

A. The Constitution of Montana (Article XI Local Government Section  
3, forms of Government) states the following in part:

(2) One optional form of county government  
includes, but is not limited to, the election of

2 three county commissioners, a clerk and recorder, a  
3 clerk of district court, a county attorney, a sheriff,  
4 a treasurer, a surveyor, a county superintendent of  
5 schools, an assessor, a coroner, and a public admin-  
6 istrator. The terms, qualifications, duties, and  
7 compensation of those offices shall be provided by  
8 law. The Board of county commissioners may consoli-  
9 date two or more such offices.

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B. The County Commissioners' authority in relationship to this  
matter appears to be as follows in MCA:

7-1-2103. County powers. A county has power  
to:

- (1) sue and be sued;
- (2) purchase and hold lands within its limits;
- (3) make such contracts and purchase and hold  
such personal property as may be necessary to the  
exercise of its powers;
- (4) make such orders for the disposition or  
use of its property as the interests of its inhabi-  
tants require;
- (5) levy and collect such taxes for the purposes  
under its exclusive jurisdiction as are authorized  
by this code or by special statutes.

7-1-2104. Exercise of county power. A county's  
powers can only be exercised by the board of county  
commissioners or by agents and officers acting under  
their authority or authority of law.

7-4-2110. Supervision of county and other officers.  
The board of county commissioners has jurisdiction  
and power, under such limitations and restrictions  
as are prescribed by law, to:

- (1) supervise the official conduct of all  
county officers and officers of all districts and  
other subdivisions of the county charged with  
assessing, collecting, safe-keeping, management, or  
disbursement of the public revenues;
- (2) see that they faithfully perform their  
duties;
- (3) direct prosecutions for delinquencies; and
- (4) when necessary, require them to renew  
their official bonds, make reports, and present  
their books and accounts for inspection.

7-4-2402. Authorization to exceed limitation on  
number of deputy officers. The board of county  
commissioners in each county is hereby authorized to  
fix and determine the number of county deputy officers  
and to allow the several county officers to appoint  
a greater number of deputies than the maximum number  
allowed by law when, in the judgment of the board,  
such greater number of deputies is needed for the  
faithful and prompt discharge of the duties of any  
county office.

7-4-2505. Amount of compensation for deputies and  
assistants. (1) Except as provided in subsection  
(2), the boards of county commissioners in the

several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

- (a) sheriff;
- (b) clerk and recorder;
- (c) clerk of the district court;
- (d) treasurer;
- (e) assessor;
- (f) county attorney;
- (g) auditor.

(2) (a) Except as provided in subsection (2)(b), the salary of no deputy or assistant shall be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

7-5-2101. General authority of county commissioners.

(1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

C. The County Treasurer's authority in relationship to this matter appears to be as follows in MCA:

7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and such other qualifications as may be prescribed by law:

- (a) one county attorney;
- (b) one clerk of the district court;
- (c) one county clerk;
- (d) one sheriff;
- (e) one treasurer;
- (f) one auditor if authorized by 7-6-2401;
- (g) one county superintendent of schools;
- (h) one county surveyor;
- (i) one assessor;
- (j) one coroner;
- (k) one public administrator; \* \* \* \*

7-4-2401. Deputy officers. (1) Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk.

7-4-2403. Official mention of principal officer includes

2 deputies. Whenever the official name of any principal  
3 officer is used in any law conferring power or imposing  
4 duties or liabilities, it includes his deputies.

5 7-6-2102. Limitation on number of deputy county treas-  
6 urers. (1) Except as provided in subsection (2), the whole  
7 number of deputies allowed the county treasurer must not  
8 exceed:

- 9 (a) two in counties of the first class;
- 10 (b) one in counties of all other classes.

11 (2) The board of county commissioners may allow such  
12 additional deputies as may be necessary during the months  
13 of November and December of each year.

14 7-6-2103. Suspension of county treasurer in case of  
15 misconduct. Whenever any action based upon official mis-  
16 conduct is commenced against any county treasurer, the  
17 board of county commissioners may in its discretion sus-  
18 pend him from office until such suit is determined and may  
19 appoint some person to fill the vacancy.

20 7-6-2111. Duties of county treasurer. The county  
21 treasurer must:

22 (1) receive all money belonging to the county and  
23 all other money directed to be paid to him by law, safely  
24 keep the same, and apply and pay them out, rendering account  
25 thereof as required by law;

26 (2) keep an account of the receipt and expenditures  
27 of all such money in books provided for the purpose, in  
28 which must be entered:

29 (a) the amount, the time when, from whom, and on what  
30 account all money was received by him;

31 (b) the amount, time when, to whom, and on what ac-  
32 count all disbursements were made by him;

(3) so keep his books that the amounts received and  
paid out on account of separate funds or specific appropri-  
ations are exhibited in separate and distinct accounts,  
with the whole receipts and expenditures shown in one gen-  
eral or cash account;

(4) enter no money received for the current year on  
his account with the county for the past fiscal year until  
after his annual settlement for the past year has been made  
with the county clerk;

(5) disburse the county money only on county warrants  
issued by the county clerk, based on orders of the board of  
county commissioners, or as otherwise provided by law.

7-6-2112. Treasurer's report to county commissioners.

(1) Each county treasurer must make a detailed report, at  
every regular meeting of the board of county commissioners  
of his county, of all money received by him and the disburse-  
ment thereof and of all debts due to and from the county  
and of all other proceedings in his office, so that the  
receipts into the treasury and the amount of disbursements,  
together with the debts due to and from the county, appear  
clearly and distinctly.

(2) On the first Monday of January, April, July, and  
October of each year the county treasurer must settle with  
the board of county commissioners for all money collected  
and on said days must deliver to said board affidavits veri-  
fying the reconciliation of the balance on hand in the county  
treasury. After the approval of such statements and the  
accompanying affidavits, one copy of such report shall be  
filed with the county clerk of said county and one copy  
shall be retained by the county treasurer.

3 Title 7, Chapter 6, Part 23 MCA sets forth the budget proce-  
4 dure for the county taxation and expenditures. In Budget prepara-  
5 tion, the procedure requires each county official in charge of  
6 an office to file with the county clerk and recorder a detailed  
7 and itemized estimation of all probable revenues and expenditures,  
8 including wages, required by the office for the next fiscal year.  
9 (7-6-2311(2)(c)MCA). After the county clerk and recorder tabu-  
10 lates all the estimated revenues and expenditures, the county  
11 commissioners shall consider the estimated revenues and expendi-  
12 tures. The County Commissioners may make any revisions to the  
13 estimated revenues and expenditures. The tabulations of the esti-  
14 mated revenues and expenditures plus any revisions made by the  
15 County Commissioners is the preliminary budget. (7-6-2313--7-6-2315  
16 MCA). After the preliminary budget has been subject to public  
17 inspection and a public hearing, the first budget is approved and  
18 adopted by the County Commissioners on the second Monday of August.  
19 (7-6-2317 MCA). The County then determines cash flow and tax  
20 levy. (7-6-2318--7-6-2319 MCA). The final budget is then approved,  
21 adopted and entered in detail in the official minutes of the County  
22 Commissioners. (7-6-2320 MCA).

23 IV DISCUSSION

24 On May 17, 1979, the MPEA on behalf of Stafford and Brown  
25 filed the following unfair labor practice charge, in part:

26 . . . .

27 That the Board of County Commissioners of Cascade County  
28 has engaged in an unfair labor practice violation of Section  
29 39-31-401(5) MCA, in that said employer has refused to engage  
30 in collective bargaining in good faith with the exclusive  
31 representative by refusing to participate in arbitration  
32 concerning the dismissal of two employees from the office of  
the County Treasurer of Cascade County, all as is required by  
the collective bargaining agreement presently in effect between  
the parties. Further, that said unfair labor practice occurred  
on or about May 7, 1979, as more fully appears from the corre-  
spondence of the Board of County Commissioners, dated May 7,  
1979, attached hereto as Exhibit "A", and by this reference  
made a part hereof.

... We [County Commissioners] would rather have the matter decided in court than by an Arbiter.

Under current Montana law, if an arbitration process resulted in the County Commissioners being required to reinstate these individuals, it is questionable that we would have the authority to do so. The Treasurer is an elected official and, as such, it is probable that reinstatement of the individuals in question by the Commissioners would end up in court anyway.

On May 30, 1979, the County Commissioners answer the above charge as follows, in part:

I.

The Cascade County Commissioners and the former Cascade County Treasurer, George Schroeder entered a collective bargaining agreement with the Montana Public Employees Association, Inc., for a term beginning July 1, 1977 and ending June 30, 1979. On March 5, 1979 a newly elected Treasurer, C. L. O'Connell took office. Treasurer O'Connell is not a signatory to the current agreement.

II.

The Board of County Commissioners of Cascade County will abide by the terms of the Agreement, specifically Addendum A, Grievance Procedure, and will submit to arbitration the current dispute. The current Treasurer, C. L. O'Connell, has refused to cooperate with or be bound by the Grievance Procedure of the current Agreement.

III.

The Board of County Commissioners, by this ANSWER, does not make any admissions nor denials on behalf of the current Cascade County Treasurer.

On June 18, 1979, MPEA motioned to amend the above charge by adding the present Cascade County Treasurer, C. L. O'Connell, as a Defendant. After the motion was granted, and a summons and charge were served, Mr. O'Connell filed the following answer, in part:

1. This defendant is not a party to the agreement referred to in the Complaint and is therefore not a proper party to this proceeding.
2. This defendant is entitled to reasonable costs and expenses, including attorney's fees, which he has incurred and will incur in connection with having to appear in this section.
3. The Board of Personnel Appeals does not have jurisdiction or authority to decide whether or not this defendant is a party to or bound by the agreement referred to in the Complaint.
4. The Complaint generally fails to state any claim against this defendant upon which relief can be granted.

2 A. JURISDICTION AND LEGAL COST

3 Mr. O'Connell in his answer states the Board of Personnel  
4 Appeals has no jurisdiction in this case. Mr. O'Connell's Brief in  
5 this case contains no reference or argument directed to the question  
6 of jurisdiction. Therefore, I believe Mr. O'Connell has abandoned  
7 that argument.

8 Like jurisdiction, Mr. O'Connell has not referenced or argued  
9 the question of legal cost in his Brief. The parties are directed  
10 to Section 39-31-406(4) and (3) MCA. The parties will note the  
11 remedies provided the Board of Personnel Appeals do not include  
12 awarding legal costs.

13 B. STAFFORD AND BROWN'S EMPLOYER

14 There is a labor agreement in effect between the County  
15 Commissioners and MPEA governing the employment of Stafford and  
16 Brown at the time the complainants were not "rehired". (FF A1, A2,  
17 A6, B Preamble, B Article 1, C). The newly elected County Treasurer,  
18 Mr. O'Connell, did not ratify or sign the labor agreement. (FF A4,  
19 A5, B). Along with other county officials, the former County Treasurer  
20 George R. Schroeder, did sign the labor agreement while in office  
21 that is in effect between MPEA and the County Commissioners. (F A2,  
22 B).

23 Mr. O'Connell contends that he is not a party to the labor  
24 agreement and therefore is not bound by the labor agreement. Mr.  
25 O'Connell also contends that he is the separate, autonomous elected  
26 employer of Brown and Stafford.

27 Who is Stafford and Brown's public employer within the definition  
28 of Section 39-31-101(1) MCA?

29 The Montana Supreme Court in Local 2390 of American Federation  
30 of State, County and Municipal Employees, AFL-CIO (AFSCME) vs.  
31 City of Billings, Montana, et. al. and members of the Board of  
32 Trustees of the Billings City Library 555 P2d 507, 93 LRRM 2753  
(1976) set forth the following test to find an employee's public  
employer:



2 The appellants [trustees of the Billings City Library] alleged  
3 that the agreement between the City and the union was not  
4 binding upon the appellants, because they had neither negotiated  
5 it nor ratified it. However, the district court held contrary  
6 to this position, and entered two judgments, one in favor of  
7 the union and Ruth Ware against the City and the appellants,  
8 the other in favor of the City on a cross-complaint against the  
9 appellants. Appellants appeal both judgments.

10 The only issue determinative of this appeal is whether  
11 Ruth Ware's "public employer" within the meaning of the  
12 Collective Bargaining for Public Employees Act, sections  
13 59-1601 et seq., R.C.M. 1947, [39-31-101 MCA] was the City or  
14 the appellants. In the latter situation the agreement would  
15 not be binding on the appellants, since a separate and  
16 autonomous employer cannot be bound to a contract he has  
17 neither negotiated or ratified. Fabijanec v. Sperry Gyroscope  
18 Division, 370 F. Supp. 62, 85 LRM 2666 (1974). On the other  
19 hand, should her "public employer" be the City, the appellants  
20 are bound by the agreement. [Emphasis added]

21 In the above Montana Supreme Court case, the court set forth  
22 the following facts:

23 The appellants contend that they are the "public employer"  
24 of Ruth Ware by way of section 44-223, R.C.M. 1947, which  
25 states:

26 . . . With recommendation of the chief librarian the board  
27 shall employ and discharge such other persons as may be necessary  
28 in the administration of the affairs of the library, fix and  
29 pay their salaries and compensation and prescribe their duties.

30 \* \* \*

31 We cannot limit our examination of the legislative intent  
32 of the Library Systems Act to the section cited by the appellants,  
33 but we must consider the entire Act. When so analyzed the  
34 library and its board of trustees is not wholly independent and  
35 autonomous entity separate and apart from the local governing body  
36 The local governing body and its electors decide whether to  
37 create a library (section 44-219, R.C.M. 1947); the mayor  
38 appoints the members of the board of trustees (section 44-221,  
39 R.C.M. 1947); the local governing body establishes the levy,  
40 with certain limitations, for a special tax on the property  
41 owners to create a library fund (section 44-220, R.C.M. 1947);  
42 the governing body decides whether to issue bonds for the  
43 erection and building of library building and the purchase of  
44 land therefor (section 44-220, R.C.M. 1947); the board of  
45 trustees must submit an annual financial statement to the local  
46 governing body and also an annual budget indicating what support  
47 and maintenance will be required from public funds (section  
48 44-222, R.C.M. 1947); the treasurer of the city handles the  
49 library fund in accord with the orders and warrants of the  
50 board of trustees (section 44-220, R.C.M. 1947); and the local  
51 governing body may create a library depreciation reserve fund  
52 from moneys allocated to the library during the year but not  
53 expended by the end of that year, and invest such moneys  
54 (section 44-230, 44-231, R.C.M. 1947). Considering the entire  
55 scheme of the Library Systems Act, the board of trustees of the  
56 Billings City Library is granted independent powers to management  
57 [manage] and operate the library, but they are still an adjunct  
58 of the local government, the, City of Billings.

59 \* \* \*

2 The economic realities show that the City, not the board  
3 of library trustees, ultimately provides the salaries and wages  
4 of the library personnel. The City has a substantial legitimate  
5 interest in the operation of the library, which qualifies the  
6 City as the "public employer" of the Billings City Library  
7 personnel including Ruth Ware.

8 We hold there is no inconsistency between the Library  
9 Systems Act and the Collective Bargaining for Public Employees  
10 Act. Under the Library Systems Act, as a whole, the board of  
11 trustees is given independent powers to manage and operate the  
12 library. However, this does not qualify the Board as a "public  
13 employer" within the meaning of the Collective Bargaining For  
14 Public Employees Act, but merely as "supervisory employees" as  
15 defined in section 59-1602(3), R.C.M. 1947 [39-31-103 (3) MCA].

16 Finding the City to be the "public employer" of Ruth Ware,  
17 we also find the collective bargaining agreement between the  
18 City and the union was binding upon the appellants. [Emphasis  
19 added]

20 In the case at hand, I find the following:

21 1. One form of County Government may include, but not limit  
22 to, an elected Treasurer but the Treasurer's office may be consolidated  
23 with one or more other offices by the County Commissioners.  
24 (Constitution of Montana).

25 2. The County has the power to enter into such contracts as  
26 may be necessary to exercise the county's powers authorized by law.  
27 (7-1-2103, 7-1-2104 MCA). The County may perform all other acts  
28 required but not enumerated in this section or acts necessary to  
29 fully discharge the duties of the chief executive of county  
30 government. (7-5-2101 MCA).

31 3. The County Treasurer may be elected or appointed.  
32 (7-4-2203 MCA). The County Commissioners has jurisdiction and power  
to supervise all county officers including the Treasurer. (7-4-2402  
MCA). The County Commissioners may in their discretion suspend the  
County Treasurer for misconduct. The County Commissioners may  
appoint a person to fill the vacancy until such suit is determined.  
(7-6-2103 MCA).

4. The duties of the County Treasurer are set forth in detail  
by law, including a required detailed report to the County Commis-  
sioners at every regular meeting. (7-6-2111, 7-6-2112 MCA). The

2 County Treasurer must appoint his deputies, clerks and subordinate  
3 officers in writing and file the appointment letter with the County  
4 Clerk. (7-6-2103 MCA)

5 5. The law set forth a limitation on the number of deputies  
6 allowed the County Treasurer. (7-6-2102 MCA). When in the judgment  
7 of the County Commissioners a greater number of deputies are needed  
8 to faithfully and promptly discharge the duties of the office, the  
9 County Commissioners may allow the County Treasurer to appoint a  
10 greater number of deputies than allowed by law. (7-4-2402 MCA).

11 6. The wages paid the deputies and assistants to the County  
12 Treasurer is set by the County Commissioners within the limits set  
13 by law. (7-4-2505 MCA). The County Commissioners set the final  
14 budget for all county expenditures of the County Treasurer including  
15 wages. (Title 7, Chapter 6, Part 23 MCA).

16 A close comparison of the AFSCME case with this case demonstrates  
17 that the Trustees of the Billings City Library have the power to set  
18 the wages paid the library personnel but the County Treasurer has no  
19 power to set the wages paid his deputies; that both the Trustees of  
20 the Billings City Library and the County Treasurer have the power to  
21 select their respective deputies and assistants; that local or  
22 County Government within the mandate of the electors decide whether  
23 to create a library or whether or not to create a separate, elected  
24 County Treasurer; that both the Billings Library and the County  
25 Treasurer are financially controlled and subjected to local or  
26 county government; and that the County Treasurer is subject to much  
27 closer statutory directives and County Commissioner's supervision  
28 than the Billings Library is subject to local government supervision.  
29 Therefore, I conclude that the AFSCME case is substantially parallel  
30 to this case and the principles of separate and autonomous as set forth  
31 in AFSCME indicate that the Treasurer is not the public employer  
32 under the Collective Bargaining for Public Employees Act.

C. BARGAINING UNIT

2 A point where the AFSCME case is not parallel with this case is  
3 the fact that the trustees of the Billings Library are appointed  
4 while the County Treasurer, in this case, is elected. Because the  
5 County Treasurer is an elected office, an examination of the collective  
6 bargaining unit and the County Treasurer as the sole public employer  
7 is in order.

8 One of the defendants argues that the administrative note of  
9 the collective bargaining unit determination" . . . is not relevant  
10 to \* \* \* the issue of 'who is the public employer' as briefed by  
11 this defendant." I disagree because the administrative note provides  
12 the historical background of the unit determination and because an  
13 order from this Board that stated the County Treasurer was the sole  
14 public employer would vacate that unit determination.

15  
16 For analysis, I would like to use the following example:

17  
18 Brown, Stafford and other assistants to the County Treasurer  
19 would be a separate collective bargaining unit with the County  
20 Treasurer as the public employer for Brown, Stafford and other  
21 Treasury assistants. The other elected county offices would each  
22 have their separate bargaining unit with their respective public  
23 employer.

24 Analysis of the above example:

25  
26 1. What could each separate elected public employer effectively  
27 negotiate with their respective deputies and assistants? The procedure  
28 for scheduling and using vacation leave, taking sick leave, and  
29 using other leaves? Yes. Wages? No, because the County Commissioners  
30 set the budget and wages of the deputies and assistants. (7-4-2505;  
31 title 7, chapter 6, Part 23 MCA). Insurance Benefits? No, because  
32 the County Commissioners set the budget. Therefore a conclusion  
that a separate elected official can only effectively negotiate on

2 non-monetary working conditions is in order. Under the above example,  
3 the deputies and assistants to a separate elected public employer  
4 would be totally frustrated trying to negotiate wages and monetary  
5 benefits with an official who cannot resolve their problems.

6 2. With a few deputies and assistants to the County Treasurer  
7 in one bargaining unit and with the deputies and assistants to the  
8 other elected county officers in their respective separate bargaining  
9 unit, each bargaining unit would have some different benefits than  
10 the other bargaining units. Soon the deputies and assistants in one  
11 bargaining unit would be trying to get a few new, different or  
12 better benefits than the deputies and assistants in the next office  
13 while the deputies and assistants in both offices are doing the same  
14 basic work. This whipsawing of benefits would have a spiral affect  
15 and the County Courthouse would never be tranquil because one group  
16 of the deputies and assistants would always be negotiating.

17 Both of the above analyses demonstrate the example would not be  
18 in harmony with the collective bargaining policy of the State of  
19 Montana . . . "...To promote public business by removing certain  
20 recognized sources of strife and unrest . . . ." (39-31-101 MCA).

21 Comparing the above example with the facts at hand, I believe  
22 the lack of ability to effectively negotiate with the employees  
23 indicates that the treasurer is not the public employer and the same  
24 principle applies to an alleged public employer whether he is elected,  
25 appointed or employed.

26 A ruling that the County Treasurer is the public employer of  
27 Brown and Stafford would produce the above example. The ruling  
28 would not be in harmony with Pue vs. Lewis and Clark County 75 M  
29 207, 243 P 573 (1926) and Hicks vs. Stillwater County 84 M 38, 274 P  
30 296 (1929) in which the Montana Court held the County Commissioners  
31 have the general supervision and control over the officers, affairs  
32 and finances the County and it may be concluded that unless authority  
therefor shall be found in the statutes, no other county officer may  
bind the county by contract.

2 D. RULING OF OTHER STATES.

3 I will cite a few other state's statutes and cases for guidance  
4 in the application of Montana's Collective Bargaining Act. The  
5 Montana Supreme Court in State Department of Highways vs. Public  
6 Employees Craft Council, 165 Mont. 249, 529 P2d 785 (1974) and other  
7 cases approved using the National Labor Relations Act, 29 USCA,  
8 Sections 151-166 (NLRA) for guidance.

9 Because of the profit reward differences between public and  
10 private sector collective bargaining employers, I believe public  
11 sector collective bargaining from other states will give better  
12 guidance to the question of who is Brown and Stafford's Public  
13 Employer within the definition of Montana's collective bargaining  
14 act.

15 Using the principles of comparison as stated in State De-  
16 partment of Highways, supra, I believe New York's Taylor Act and  
17 Pennsylvania's Public Employee Relations Act can give some guidance  
18 in applying section 39-31-103(1) MCA which states in part..."Public  
19 employer means the state of Montana or any political subdivision  
20 thereof, including but not limited to any town, city, county, district,  
21 school board, board of regents, public and quasi-public corporation,  
22 housing authority or other authority established by law,\*\*\*\*.

23 In modifying the judgment of a lower court, the New York Supreme  
24 Court appellate division, third department found the county and  
25 county sheriff are joint public employers. The sheriff is not the  
26 sole public employer under the Taylor Law of New York of deputy  
27 sheriffs he hires, fires and determines the conditions of employment  
28 other than salary which is fixed by the county. The New York court  
29 in Ulster County vs. CSEA Unit, Sheriff's Dept. 37 AD 2d 437, 79  
30 LRRM 2265 (1971), interpreted paragraph (f) of subdivision 7 of  
31 section 201 of the Civil Service Law (Taylor Law) which defines a  
32 public employer in part as "(f) any\*\*public corporation, agency or  
instrumentality of unit of government which exercises governmental

2 powers under the laws of the state." (79 LRRM at 2266). The New  
3 York Court states the following in part:

4 It is conceded that Ulster County is a public  
5 employer. The question on which the State [New York  
6 State Public Employment Relations] Board and Special  
7 [Court] Term disagreed was whether the county and the  
8 Sheriff are joint employers or one alone should be  
9 designated as the appropriate negotiation unit. \*\*\*

10 While a finding of joint employers is rare, the  
11 appellants' determination of the practical necessity  
12 for such a finding is supported by the record and  
13 should not be disturbed. The Taylor Law was enacted  
14 with the hope that it would insure tranquility in the  
15 government's labor relations by protecting the rights  
16 of employees and the public generally. The prohibition  
17 of public strikes was continued, but the statute allowed  
18 employees to redress their grievances by requiring that  
19 the public employer negotiate and contract with employee  
20 groups with respect to the terms and conditions of  
21 employment. Implicit in the legislation is the concept  
22 that if some accepted private labor practices are to be  
23 prohibited in the case of public employees, effective  
24 negotiations must supply a suitable alternative.

25 The statute mandates that employers negotiate with  
26 respect to terms and conditions of employment. \* \* \*  
27 Obviously, these negotiations cannot be effective if  
28 employees are obliged to negotiate with an employer who  
29 is without power with respect to the matter in dispute.  
30 The most notable example is salary, an item which the  
31 Sheriff has no control over. The amounts and increments  
32 are determined by the county. \* \* \* The simple answer  
33 to the argument that the Sheriff should be the sole  
34 employer because he can make "effective recommendations  
35 to other administrative authority or the legislative  
36 body" \* \* \* is that appellant's director found after  
37 the hearing that this Sheriff tried to set up his own  
38 salary plan and was unable to do so.

39 The statute is best implemented if the employees'  
40 representatives negotiate directly with those who have  
41 authority over all the essential terms of employment.  
42 In this case that requires that separate legal entities  
43 be named as a single employment unit. (cities removed)

44 \* \* \* The appellant's [New York State Public  
45 Employment Relations] determination that both Ulster  
46 County and the Ulster County Sheriff are public employers  
47 and that they are joint employers of the Deputy Sheriffs  
48 has a rational basis on the record before us.

49 The Pennsylvania Supreme Court, Eastern District, restrained  
50 the union from enforcing the grievance-arbitration procedure of a  
51 contract because the contract was between the union and the pre-  
52 decessor Register of Wills while the correct parties to the contract  
53 are the city with the Register of Wills, as the employer, and the  
54 union. The Pennsylvania Supreme Court in Costigan vs. Philadelphia  
55 Finance Dept. Employees Local 696 341 A2d 456, 90 LRRM 2328 (1975)  
56 applied the guidelines from County of Ulster, supra, and stated in

part:

In the instant case, no single entity controls all of the terms of the employment relationship. The Register of Wills is conceded by all parties to have the exclusive power to hire, fire, promote, and direct the work of the employees. The City of Philadelphia pays most of the employee salaries and other compensation costs of the office and exercises considerable control over the fringe benefits accorded the employees, which include enrollment under the City's group life and health insurance plans and coverage by the City's pension plan. Thus the Register and the City each exercise control over important "conditions of the relation (which) are such that the process of collective bargaining may appropriately be utilized as contemplated by the Act," and both must be deemed employers for purposes of the Act. [Public Employee Relations Act (Act 195)]. \*\*\*

The Public Employee Relations Act (Act 195) in section 301 states in part... "(1) 'Public employer' means the Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof\*\*\*".

In 1976 the Pennsylvania Legislature amended the Public Employee Relations Act (Act 195), to read as follows:

Provided, however, that with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employees paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employees. The exercise of such responsibilities by the county commissioners shall in no way affect the hiring discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.

Montana has no equivalent section in the Collective Bargaining Law but the Pennsylvania court's view of this section is worthwhile. In Ellenbogen vs. Allegheny County 388 A2d 730, 99 LRRM 2481 (1978) the Pennsylvania Supreme court, Western District, states the following about the 1976 amendment:

\*\*\* The amendment governing representation of managerial interests promotes several important public interests, including fiscal responsibility. County commissioners are charged with the responsibility of raising revenue and allocating funds among various county services\* \* \* Thus, the amendment allows county commissioners to make managerial decisions affecting



2 tax dollars. This reflects the legislative judgment  
3 that the officials charged with providing revenue for  
4 budgets are best able to assess whether employee proposals  
5 at the bargaining table are feasible and consistent  
6 with the overall administration of county fiscal and  
7 governmental affairs.

8 The Legislature's designation of county commissioners  
9 as managerial representative also avoids the potential  
10 difficulties of having too many decision-makers, none  
11 with full authority to reach an agreement on the public  
12 side of the bargaining table. The amendment thus  
13 ensures that the managerial representative will have  
14 full authority to reach early agreement. Such a setting,  
15 legislatively designed to promote swift and efficient  
16 bargaining proceedings, is not only attractive to  
17 parties at the bargaining table, but also advances the  
18 public interest in settlement of labor disputes.

19 For other like cases see Sweet vs. Pennsylvania Labor  
20 Relations Board 388 A2d 740, 99 LRM 2486 (1977); Back County  
21 Board of Judges vs. Back County Commissioners 388 A2d 744, 99 LRM  
22 2489 (1978); County of Washington vs. PLRB 93 LRM 2339 (1976); and  
23 AFSCME, Local 1518 vs. Sheriff Meharg 258 Nw2d 168, 96 LRM 3047  
24 (1977).

#### 25 E. CONCLUSION OF STAFFORD AND BROWN'S EMPLOYER.

26 Judging from the AFSCME case and the bargaining unit Example  
27 plus using the rulings from other states as guidances, a conclusion  
28 that the Cascade County Commissioners are the public employer is  
29 appropriate. This conclusion is in order because the Cascade County  
30 Treasurer is not separate and autonomous and because the Cascade  
31 County Treasurer cannot effectively negotiate with his employees in  
32 the area of monetary matters. By ordering the County Commissioners  
as the public employer, the party with the control of the tax dollar  
income to the county and salary expenditure by the county is at the  
bargaining tables as indicated in the New York and Pennsylvania  
cases.

In the AFSCME case the court held the Library Board to be the  
"supervisory employee" having independent powers to manage and  
operate the Library. The Montana Collective Bargaining Act defined

39-31-103 (3) MCA "'Supervisory employee' means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment."

The sheriff in Ulster County, supra, the Register of Will in Costigan, supra, and the judges in Ellenbogen, supra, as well as the Cascade County Treasurer all have the same initial powers as set forth in the definition of supervisory employee.

I will not order joint employers as in New York and Pennsylvania, because this would add to the sources of strife and this would add to the proliferation of small single office bargaining units as set forth in the analysis of the bargaining unit. A joint employer order would also subtract from the theory of one consistent overall administration of county governmental affairs. (Ellenbogen, supra). Therefore I conclude that the Cascade County Treasurer is a supervisory employee.

#### F. THE EFFECT OF THE LABOR AGREEMENT

Can the public employer agree with a union on the procedure a supervisory employee must follow in exercising his supervisory powers?

Generally, by definition, the Public Employer can set forth how he wishes a subordinate supervisory employee to act in the public employers behalf. In the case at hand, the County Treasurer is not your general subordinate supervisory employee.

In the AFSCME case, a collective bargaining agreement was in effect between the union and the City of Billings. The Court found the Library Board was bound by the provisions of the labor agreement. The termination of a Library employee by the supervisory employee, the library board, was in conflict with the terms of the labor

2 agreement.

3 It appears that the court, in holding no inconsistency between  
4 the Library System Act, which gives the Library Board the power to  
5 employ and discharge employees, and the Collective Bargaining Act,  
6 approved the actions of the public employer in setting forth how the  
7 supervisory employee would use its powers. Because of the "economic  
8 realities" in ultimately providing the salaries, the court in AFSCME  
9 found ... "The City has substantial legitimate interest in the opera-  
10 tion of the library", therefore allowing the city to set forth how  
11 the library board was to supervise the library personnel.

12 In the case at hand, the public employer, Cascade County Com-  
13 missioners, and the MPEA set forth how the Treasurer was to use his  
14 supervisory power. The County has substantial interest in the  
15 operation of the Treasurer's Office not only because the County Com-  
16 missioners provide tax dollars for the wage and set the wage, but  
17 also because the County Commissioners have the jurisdiction to  
18 supervise the official conduct of all county offices and because the  
19 County Commissioners need the Treasurer's detailed report at every  
20 regular meeting and the Treasurer's quarterly balance to effectively  
21 manage the county's fiscal affairs. (7-4-2505, 7-4-2110, 7-4-2112,  
22 and Title 7, chapter 6, part 23 MCA). I conclude that the Cascade  
23 County Commissioners have the power by way of a labor agreement to  
24 set forth how the County Treasurer is to exercise his supervisory  
25 powers.

26 From the fact that all the Cascade County Commissioners and  
27 some of the county elected officers signed the collective bargaining  
28 agreement between the County and MPEA, it appears that the manage-  
29 ment consisted of a team effort. I approve of this team effort but  
30 the duty to bargain is only that of the public employer, the county  
31 commissioners. This team effort allows a swift and efficient bargain-  
32 ing process by having all parties affected by the agreement present  
and allows for good management input.

2 After the labor agreement was negotiated, a change in some of  
3 the elected officers has taken place. Can a public official bind his  
4 successor to a labor contract that extend beyond his term of offices?

5 In Reese vs Lombard 47 AD2d 327, 89 LRRM 2955 (1975), the New  
6 York Supreme Court, appellate Division, Fourth Department addressed  
7 the question in part as follows:

8 The Taylor Law does not specify or limit the  
9 period of public employment contracts. The statute  
10 only provides that the parties may make contracts which  
11 bind them "for the period set forth therein".\* \* \* The  
12 term was left to the discretion of the contracting  
13 parties and nothing contained in the law suggests that  
14 the Legislature intended to restrict the period of such  
15 contracts to an elected public employer's time in  
16 office. Manifestly such periods have no necessary  
17 relationship to employees' terms and conditions of  
18 employment.

19 The policy and purpose of the Taylor Act have been  
20 rehearsed so frequently that they scarcely need to be  
21 repeated here.\* \* \* Public employees were given the  
22 right to organize and contract upon subjects involving  
23 their employment because of the legislative desire to  
24 bring about harmonious employer-employee relationships,  
25 encourage professionalism and reduce work stoppages in  
26 government employment. It would be a peculiar statute  
27 which attempted to promote efficiency in government  
28 employment by conditioning managerial decisions on  
29 public referenda or which limited employer-employee  
30 agreements to artificial timetables dictated by the  
31 election calendar.

32 In summary, we hold that this contract was  
properly executed by the Sheriff and the county and  
that it bound not only the Sheriff who executed it but  
his successor in office.

Using the above New York case for guidance, the Montana Col-  
lective Bargaining Act contains the following important section, in  
part:

39-31-305 (2) MCA \*\*\*and negotiate in good faith  
with respect to wages, hours, fringe benefits, and  
other conditions of employment or the negotiation of an  
agreement or any question arising thereunder and the  
execution of a written contract incorporating any  
agreement reached.

39-31-104 MCA. Rules. The board shall adopt,  
amend, rescind such rules it considers necessary and  
administratively feasible to carry out the provisions  
of this chapter.

Rule 24.26.501 ARM of the Board of Personnel Appeals  
states:

(2) Agreements reached between a public employer

2 and a labor organization shall be a minimum of one year  
3 in duration and shall not exceed two years.

4 Finding the labor agreement between MPEA and Cascade County is  
5 in accord with the above rule, finding no statutory authority limiting  
6 a labor agreement, and for the reasons set forth in Reese, supra, I  
7 conclude the labor agreement is binding on MPEA and Cascade County  
8 Commissioners even though some of the commissioners and some of the  
9 supervisory employees may have changed. This conclusion is in  
10 harmony with Picket Publishing Co. vs. Board of County Commissioners  
11 of Carbon County 36 M-188, 92 P 524 (1907) in which the Montana  
12 Court held a contract made by the Board of County Commissioners, a  
13 few weeks before the expiration of its term of office, and upon the  
14 expiration of a prior contract, for county printing for the two  
15 succeeding years, is valid in the absence of fraud or bad faith in  
16 the making, and is not against public policy.

17 G. FAILURE TO GRANT A GRIEVANCE HEARING

18 From the unfair labor practice charge, exhibit and answers, the  
19 complainant requested the start of the arbitration proceedings as  
20 directed in the labor agreement. (FF B). The County Commissioners  
21 agree to submit the dispute to arbitration but the Commissioners  
22 would rather have a court decide the dispute. The County Treasurer  
23 wished no part and would not be bound by the grievance proceedings.  
24 The County Commissioners were caught in the delicate middle and side  
25 stepped the issue. Did the defendant(s) commit an unfair labor  
26 practice by not processing or taking part in the arbitration?

27 This board entertained an unfair labor practice charge against  
28 the City of Livingston brought by the American Federation of State,  
29 County and Municipal Employees. The charge claimed the City com-  
30 mitted an unfair labor practice by not granting a grievance hearing  
31 as directed by the labor agreement. This board agreed with the  
32 charging party. The Montana Supreme Court in City of Livingston vs.  
AFSCME, Council 9, 571 P2d 374, 100 LRRM 2528 (1977) set forth the

following.

The issue presented on appeal is whether the city's failure to provide Dyer a dismissal hearing constituted an unfair labor practice.

By failing to grant Dyer a grievance hearing, the city breached its collective bargaining agreement, and thereby committed an unfair labor practice in violation of section 59-1605 (1) (a), R.C.M. 1947 [39-31-401 MCA]. That section provides in part:

"It is an unfair labor practice for a public employer to:

"(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 59-1603 [39-31-201 MCA] of this act;" Section 59-1603 (1) [39-31-201 MCA] provides:

"Public employees shall have \*\*\* the right \*\*\* to bargain collectively \*\*\*."

The phrase "to bargain collectively" is defined in section 59-1605 (3) [39-31-305 (2) MCA] as:

\*\*\*the performance of the mutual obligation of the public employer \*\*\* and the representatives of the exclusive representative to \*\*\* negotiate in good faith with respect to \*\*\* conditions of employment, or the negotiation of an agreement, or any question arising thereunder.\*\*\* (Emphasis added.)

Thus, by statute, the duty to bargain "in good faith" continued during the entire course of the contract.

The Supreme Court has held that "Collective bargaining is a continuing process. Among other things it involves \*\*\* protection of employee rights already secured by contract." Conley v. Gibson, 355 U.S. 41, 2 L Ed 2d 80, 85, 78 S. Ct. 99 (1957). The processing of grievances in grievance hearings is collective bargaining. Tinkin Roller Bearing Co. v. National Labor Rel. Bd., 161 F. 2d 949, 954 (6th Cir. 1947). In Ostrowsky v. United Steelworkers of America, 171 F. Supp. 782, 79 (D. Md. 1959), aff'd., 273 F.2d 614 (4th Cir. 1960), cert. den., 363 U.S. 649, 4 L Ed 2d 1732, 80 S.Ct. 1628, (1950), the court stated: "\*\*\* the employer had as the same duty to bargain collectively over grievances as over the terms of the agreement

Under Montana's Collective Bargaining Act for Public Employees a failure to hold a grievance hearing as provided in the contract is an unfair labor practice for failure to bargain in good faith.

In the case at hand, there is no question as to the existence of a final and binding grievance procedure. (FF B-Addendum A).

There is no question that MPEA requested a grievance hearing. I find the same question in this case as the court did in the Livingston, supra, case and for reason set forth by the court, I conclude that

2 the Defendant(s) did commit a unfair labor practice.

3 V CONCLUSIONS OF LAW

4 1. The Cascade County Commissioners are the public employer of  
5 Martin Stafford and Elaine Brown as defined in Section 39-31-103(1)  
6 MCA.

7 2. The Cascade County Treasurer, C. L. O'Connell, is the  
8 supervisory employee of Martin Stafford and Elaine Brown as defined  
9 in Section 39-31-103(3) MCA.

10 3. The labor contract between Montana Public Employees Associa-  
11 tion and the Cascade County Commissioners is binding on the County  
12 Commissioners, the County Treasurer and the Montana Public Employees  
13 Association.

14 4. The Defendant(s) did violate Section 39-31-401 (5), failure  
15 to bargain in good faith, by refusing to participate in or refusing  
16 to be bound by arbitration concerning the dismissal of Martin Stafford  
17 and Elaine Brown.

18 5. By refusing to participate in or by refusing to be bound by  
19 an arbitration as set forth in the labor agreement, the defendant(s)  
20 restrained Martin Stafford and Elaine Brown in the exercise of their  
21 rights guaranteed in Section 39-31-201 MCA.

22 VI RECOMMENDED ORDER

23 The Defendant(s) are ORDERED to cease and desist from res-  
24 training Martin Stafford and Elaine Brown in the exercise of their  
25 rights guaranteed in Section 39-31-201 MCA by refusing to part-  
26 icipate in or by refusing to be bound by an arbitration.

27 The Defendant(s) are ORDERED to proceed and participate in the  
28 arbitration as set forth in the labor contract between the Montana  
29 Public Employees Association and Cascade County Commissioners.

30 It is further ORDERED that all motions, issues and charges not  
31 addressed in this recommended order are hereby denied.

32 DATED this 7<sup>th</sup> day of April, 1980

By

  
Rick D. Hooge  
Hearing Examiner

NOTE: As stated in Board of Personnel Appeals rule ARM 24.26.107 Exceptions the parties shall have 20 calendar days to file written exceptions to this recommended order. If no written exceptions are filed; this recommended order shall become the FINAL ORDER of the Board of Personnel Appeals.

## CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify  
and state that I did on the 7<sup>th</sup> day of April,  
1980 mail a true and correct copy of the above FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

MPEA, Inc.  
P.O. Box 5680  
Helena, MT 59601

C. L. O'Connell, Treasurer  
Cascade County Courthouse  
Great Falls, MT 59401

Cascade County Commissioners  
Cascade County Courthouse  
Great Falls, MT 59401

Dennis McCafferty  
430 Northwestern Bank Building  
Great Falls, MT 59401

Gary M. Zadick  
Alexandor and Baucus  
Strain Building  
Great Falls, MT 59401

Barry L. Hjort  
111 North Last Chance Gulch  
Helena, MT 59601



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